IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

CRL.A.No. 499 of 2002()

SC.66/1999 of ADDL. DISTRICT & SESSIONS COURT FAST TRACK (ADHOC-I), KOZHIKODE

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APPELLANT: ACCUSED

CHATHUKUTTY, S/O.IMBICHAN,
PARAKURINGOTT HOUSE, VIYUR AMSOM DESOM,
QUILANDY TALUK.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS: COMPLAINANT & STATE

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1. THE SUB INSPECTOR OF POLICE,
QUILANDY POLICE STATION.

2. STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 05/07/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

CRL.A.NO.499/2002

ORDER ON CRL.M.P.NO.4459/2002 & CRL.M.P.NO.6220/2002 IN CRL.A.NO.499/2002

DISMISSED

6.7.2007 SD/- K.R.UDAYABHANU, JUDGE

/TRUE COPY/

P.A. TO JUDGE

K.R.UDAYABHANU, J

Crl.A.No.499 of 2002

Dated this the 6th day of July, 2007

JUDGMENT

The appellant is the accused in the proceedings initiated for the offence under Section 55(a) of the Abkari Act and who stands convicted to undergo R.I. for two years and to pay a fine of Rs.1 lakh and in default, to undergo simple imprisonment for six months.

2. The prosecution case is that on 26.6.1997 at about 4 p.m., the accused was found in possession of 10 litres of illicit arrack in a plastic can near the goat shed situated in the compound of his residential house bearing No.5/76 at Koyilandy Municipality. The accused was arrested at the spot.

3. The evidence adduced in the matter consisted the testimony of PWs' 1 to 6, Exts. P1 to P7 and MO1. The prosecution evidence as to the occurrence is the testimony of PWs' 1 and 5, the ASI and SI respectively. PWs' 2 and 3, the alleged occurrence witnesses and witnesses to the seizure mahazar did not support the prosecution and were treated as hostile. The version of PWs' 1 and 5 as to the recovery stands corroborated to each other on material particulars. The minor discrepancies brought out appears to be

inconsequential. The seized article on chemical examination was found to contain 23.45% by volume of ethyl alcohol and hence, evidently it was illicit liquor.

4. The counsel for the appellant has contended that the conviction cannot be sustained as the contraband was produced before the court much subsequent to the date of seizure and also as there is no evidence as to the sampling done at the spot. The above particular is absent in Ext. P1 seizure mahazar and it has not been supported by any independent witness also.

5. Evidently the article was seized on 26.6.1997 but the property statement shows that the same was produced before the court below only on 5.8.1997, which is after a lapse of 40 days. Further, Ext. P1 seizure mahazar did not contain any details as to the manner in which the sampling was done. The counsel for the revision petitioner has relied on the decision reported in **Alex vs. State (2003(1) KLT SN (9) case No.12)** wherein the court has noted that as per paras 17, 26, 34, 49 and 77 of the Excise Manual the article should be produced forthwith before the court and further as per Section 102(3) Crl.P.C. the seized property should be produced before the court unless the property seized is such that it cannot be conveniently transported to the court. As to the proper

custody also, PW5, the Sub Inspector, has not testified anything as to the custody of the article seized and kept at the police station as well. As already noted above the seizure mahazar did not contain any detail as to when, where and in what manner the sample was taken. It only mentions in Ext. P1 as an additional item that item No.2 is the sample containing 375 ml in a sealed bottle. In view of the stringent punishment provided in the statute, that is, adduce imprisonment for a period which may extended to 10 years and fine which shall not be extended to Rs.1 lakh the prosecution ought to have adduced strict proof with respect to the fact that there was no occasion for substituting the sample of the contraband allegedly seized.

6. In the circumstances, I find that it cannot be held that the prosecution has proved the accusation beyond reasonable doubt. I find that the accused is entitled to benefit of doubt. The order of the court below is set aside. The accused is acquitted. The fine amount deposited shall be returned to the accused.

The appeal is allowed.

K.R.UDAYABHANU,
JUDGE

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